

Before the
Administrative Hearing Commission
State of Missouri



ANDRE L. LOVE,

Petitioner,

vs.

DIRECTOR OF DEPARTMENT OF
INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION,

Respondent.

No. 14-1460 DI

DECISION

We deny Andre L. Love’s application for licensure renewal because he committed two felonies and one misdemeanor, failed to comply with a consent order and a statute requiring disclosure of information, and lied on his application for license renewal.

Procedure

On August 20, 2014, Love filed a complaint appealing the decision of the Director of the Department of Insurance, Financial Institutions and Professional Registration (“the Director” and “the Department”) denying his application for renewal of his motor vehicle extended service contract (“MVESC”) license. On September 10, 2014, the Director filed an answer. On October 10, 2014, the Director filed a motion for summary decision. 1 CSR 15-3.446(6)¹ provides that

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

we may decide this case without a hearing if the Director establishes facts that Love does not dispute and entitle the Director to a favorable decision.

We gave Love until October 29, 2014, to respond to the motion, but he did not respond. Therefore, the following facts are undisputed.

Findings of Fact

1. Love is a Missouri resident. In his MVESC renewal application he listed a residential address of 908 Lands End Circle, St. Charles, Missouri, 63303. In the letter he sent to this Commission on August 20, 2014, Love listed his address as 823 Parkcrest Drive, Apt. D, St. Charles, Missouri, 63301.

Guilty Pleas/Consent Order

2. On December 9, 2009, in the St. Charles County Circuit Court (“the Court”), Love pled guilty to the Class D felony of driving while intoxicated and the Class D felony of driving while revoked (“2009 cases”). Love was sentenced to three years’ incarceration on each count to run consecutively. Execution of sentence was suspended and Love was placed on five years’ supervised probation with various conditions, including that Love complete an in-court program.

3. On July 5, 2012, the Department issued Love an MVESC producer license pursuant to a Consent Order (“2012 Consent Order”), in which Love agreed to certain conditions. Love’s license expired on July 6, 2014.

4. Among other things, the 2012 Consent Order required Love to do the following:
- Comply with all court orders in the 2009 cases; notify the Division² within 30 days if he failed to successfully complete his probation or had his probation revoked; and inform the Division of the consequences imposed as a result.

² The Consumer Affairs Division is a division in the Department.

- Report to the Division, within five business days, any “probation violation, probation revocation, arrest, citation, guilty plea, nolo contendere plea, finding of guilt or conviction concerning a felony or misdemeanor.”³

5. On February 19, 2013, in the Court, Love pled guilty to two counts of the Class D felony of driving while revoked (“the 2013 DWR case”).

6. On April 16, 2013, the Court sentenced Love to four years’ incarceration on each count and ordered Love to complete the Institutional Treatment Center program within the Department of Corrections. On April 16, 2013, the Court also revoked Love’s probation in the 2009 cases.

7. The Court ordered that Love’s sentences be served concurrently with each other and with his sentences in the 2009 cases.⁴

8. On May 29, 2013, in the Court, Love pled guilty to the Class A misdemeanor of stealing (“2013 stealing case”). The court sentenced Love to 90 days in jail, concurrent with all other cases, with credit for jail time served.

9. On August 28, 2013, court granted Love’s application for parole and placed Love on probation with conditions.

10. Love failed to comply with all court orders in the 2009 case.

11. Love failed to notify the Division within 30 days that he failed to successfully complete his probation or that he had his probation revoked in the 2009 case.

12. Love did not notify the Director about his probation revocation or the resulting sentence within 30 days.

³ Ex. 2 at 4-5.

⁴ The Director’s proposed statement of facts states that execution of these sentences were suspended, but we do not see that section marked on the court documents. The sentences were imposed even if execution was suspended, so they are considered convictions. *Bowen v. State*, 330 S.W.3d 832, 835 (Mo. App., W.D. 2011).

13. Love failed to report his conviction of two additional felonies and a misdemeanor to the Division within five business days.

14. Love never reported to the Director or the Division the felony proceedings against him in the 2013 DWR case or the misdemeanor proceedings against him in the 2013 stealing case.

Renewal Application

15. On May 28, 2014, the Department received Love's "Application for Motor Vehicle Extended Service Contract Producer License Renewal" ("application").

16. Love signed the "Applicant's Certification and Attestation" section of the application, which states:

I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.^[5]

17. Love signed the application under oath and before a notary public.

18. Background Question No. 1 of the application asks:

Have you ever been convicted of a crime, had a judgment withheld or deferred, received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES"), or are you currently charged with committing a crime, which has not been previously reported to this insurance department?^[6]

19. Love marked "No" to Background Question No. 1 and did not disclose any criminal convictions in response to the question.

⁵Ex. 1.

⁶*Id.*

Conclusions of Law

We have jurisdiction to hear Love's complaint.⁷ The applicant has the burden to show that he is entitled to licensure.⁸ We decide the issue that was before the Director,⁹ which is the application. When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application.¹⁰

The Director argues there is cause for denial under § 385.209:

1. The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant or licensee or the applicant's or licensee's subsidiaries or affiliated entities acting on behalf of the applicant or licensee in connection with the applicant's or licensee's motor vehicle extended service contract program has:

(2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud;

(5) Been convicted of any felony[.]

Violated Statute/Order of Director – Subdivision (2)

The Director argues there is cause to refuse to renew Love's MVESC producer license under § 385.209.1(2) because Love violated orders of the Director, as contained in the 2012 Consent Order, as follows:

⁷ Section 621.045. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

⁸ Section 621.120, RSMo 2000.

⁹ *Department of Soc. Servs. v. Mellas*, 220 S.W.3d 778 (Mo. App., W.D. 2007).

¹⁰ *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

- a. Love failed to notify the Division within 30 days that he failed to comply with court orders and thus had his probation revoked in the 2009 case;
- b. Love failed to notify the Division that as a consequence of his probation being revoked, he was sentenced to the Institutional Treatment Center within the Department of Corrections;
- c. Love failed to notify the Division of his probation revocation within the time constraints set by the 2012 Consent Order;
- d. Love failed to report his arrest and guilty plea for the 2013 DWR case, within five business days of their occurrence, as required by the 2012 Consent Order;
- e. Love failed to report his arrest and guilty plea for the 2013 stealing case, within five business days of their occurrence, as required by the 2012 Consent Order.

We agree that Love violated the 2012 Consent Order as set forth above. There is cause for denial under § 385.209.1(2).

The Director also argues Love violated § 385.209.7:

Within thirty days of the initial pretrial hearing date or arraignment, a producer shall report to the director any felony proceeding initiated by any state or the United States for any violation of law by the producer. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

Love failed to notify the Director of his felony pretrial hearing date or arraignment in the 2013 DWR case. There is cause for denial under § 385.209.1(2).

Misrepresentation or Fraud – Subdivision (3)

Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.¹¹

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some

¹¹ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 794 (11th ed. 2004).

valuable thing belonging to him.¹² The dictionary definition of “material” is “having real importance or great consequences[.]”¹³

On his application, Love lied about his two felony and one misdemeanor convictions. There is cause for denial under § 385.209.1(3).

Convicted of a Felony – Subdivision (5)

Since obtaining his MVESC producer license in 2012, Love has been convicted of two Class D felonies. There is cause for denial under § 385.209.1(5).

Lack of Discretion – § 385.209.2

In many applicant cases, the appeal vests in this Commission the same degree of discretion as the licensing agency, and we need not exercise it in the same way.¹⁴ But § 385.209.2 states:

In the event that the action by the director is not to renew or to deny an application for a license, the director shall notify the applicant or licensee in writing and advise the applicant or licensee of the reason for the denial or nonrenewal. Appeal of the nonrenewal or denial of the application for a license shall be made pursuant to the provisions of chapter 621. **Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.**

(Emphasis added). Under this provision, we have no discretion when there is any cause to refuse to issue a license.

We have found that the Director has cause to deny Love’s application under § 385.209.1(2), (3) and (5). As we have no discretion in this matter, this finding is sufficient to uphold the Director’s decision.

¹² *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

¹³ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 765 (11th ed. 2004).

¹⁴ *State Bd. of Regis’n for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012).

Summary

We grant the motion for summary decision and cancel the hearing.

SO ORDERED on November 20, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner